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**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

No. 97-3179

SONYA EVETTE SINGLETON

Defendant - Appellant

On Appeal from the United States District Court
for the District of Kansas

The Honorable Frank G. Theis
Senior District Judge

D.C. No. 96-10054-05

APPELLANT'S REPLY BRIEF

Oral Argument Requested:

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ISSUES PRESENTED FOR REVIEW

- I. The District Court Erred in Failing to Grant Appellant's Motion to Suppress the testimony of Napoleon Ransom Douglas.
- II. The District Court Erred in Failing to Grant the Defense Motion for Judgment of Acquittal on the Charge of Conspiracy to Distribute Cocaine Based Upon the Insufficiency of the Evidence.
- III. The District Court Erred in Failing to Grant the Defense Motion for Judgment of Acquittal on the Charges of Money Laundering Based Upon the Insufficiency of the Evidence.

STATEMENT OF THE CASE

Statement of Facts - Corrections of Facts Set Out in Brief of Appellee

In its Statement of Facts, at page 4, the government makes the following incorrect statement:

“One of the defendants, Napoleon Douglas, later admitted they were aware that transfers in excess of \$10,000 would trigger a notification to the Internal Revenue Service. (Tr. at 216.)” The testimony of Napoleon Douglas was as follows:

“Q. Now, you've mentioned amounts of 6,000, 5,000, 8,000. Did you ever send money over \$10,000?

A. No, ma'am.

Q. Why?

A. Because **I did not think** -- over \$10,000 the IRS would want to know where it came from.”

(Tr. Vol. IV at 216.) (Emphasis added.) Both the questions and the responses were directed at

Douglas's actions rather than the actions of Eric Johnson, Ronald McClelland or Jonathan Searcy.¹

Later in its Statement of Facts, at page 6 of its brief, the government states that Douglas testified that: “. . . while he never saw Singleton sell cocaine, he did observe Singleton on occasion handle the drugs and move them to Eric Johnson's vehicle. (Tr. at 212).” Douglas actually testified as follows:

“Q. At the time, that two-week period of time in the apartment, did you ever see Sonya Singleton handle drugs?

A. Only when **maybe** Eric, her boyfriend, was saying, hold this for me, take this to the car or get that, let's go, you know, stuff like that.

Q. Did you ever actually see Sonya Singleton sell drugs?

A. No, ma'am.”

(Tr. Vol. IV at 212.) (Emphasis added.) The actual exchange between the prosecutor and Mr. Douglas is hardly the definitive statement concerning Ms. Singleton's handling drugs implied by the government in its factual statement. The critical points in the exchange were that Douglas never saw Ms. Singleton sell drugs, and that “**maybe**” he saw her hold drugs and carry them to a car for Johnson. (Tr. Vol. IV at 212.)

Other than the above misstatements, the government has, fairly accurately, reflected the tenor of the testimony.

¹The same factual error is made by the government on page 4 of its brief with the clear implication therefrom that the defendant Sonya Singleton was somehow aware that the Internal Revenue Service monitored wire transfers based upon the amount of each transfer. There is no reference in the transcript of the trial as to what Ms. Singleton may or may not have known concerning the activities of the Internal Revenue Service.

ARGUMENT AND AUTHORITIES

I. The District Court Erred in Failing to Grant Appellant's Motion to Suppress the Testimony of Napoleon Ransom Douglas

Napoleon Douglas was the only witness whose testimony linked Ms. Singleton to cocaine and, by implication, money laundering. The government, through the United States Attorney's Office, offered Douglas something of value - the promise of a motion to reduce his sentence and assistance in reducing his sentence in Mississippi in exchange for his testimony against Ms. Singleton. The government's conduct in that regard is prohibited by Title 18 United States Code, Section 201(c)(2) and Rule 3.4(b) of the Model Rules of Professional Conduct as adopted by the State of Kansas by Kansas Supreme Court Rule 225, and effective from and after March 1, 1988. The testimony of Douglas should have been suppressed.

In its brief, the government offered no effective challenge to the fact that our courts have long recognized an inherent danger of untruthfulness in the paid "occurrence" witness. Rather, it argues, without citation to cases dealing directly with 18 U.S.C. 201(c)(2), that agreements for cooperation between the government and occurrence witnesses are not contemplated by the statute. This argument does nothing to negate the language of that statute which provides:

(c) Whoever -

(2) directly or indirectly, **gives, offers or promises anything of value to any person, for or because of the testimony** under oath or affirmation given or to be given by such person **as a witness upon a trial**, hearing, or other proceeding, before any court, any committee of either House or both Houses of Congress, or any agency, commission, or officer authorized by the laws of the United States to hear evidence or take testimony, or for or because of such persons absence therefrom;

shall be fined under this title or imprisoned for not more than two years or both.

18 U.S.C. 201(c)(2) (emphasis added).

The statute does not exempt from its ambit, promises of leniency. Section 201(d) provides:

(d) Paragraphs (3) and (4) of subsection (b) and paragraphs (2) and (3) of subsection (c) and (3) shall not be construed to prohibit the payment or receipt of witness fees provided by law, or the payment, by the party upon whose behalf a witness is called and receipt by a witness, of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing, or proceeding, or , in the case of expert witnesses, a reasonable fee for time spent in the preparation of such opinion, and in appearing and testifying.

18 U.S.C. 201(d). The language of the statute makes clear just what may be offered to a witness in exchange for his testimony. Note too that the statute does not exclude from its contemplation actions taken by the Department of Justice or by Assistant United States Attorneys.

The government next argues that no court has ruled that promises of filing a motion with the district court for sentence reduction constitutes “payment” for favorable testimony. The statute does not require payment, it requires only giving, offering or promising anything of value in exchange for testimony. The government does not deny promising to file a motion to reduce Mr. Douglas’s sentence if he testified against Ms. Singleton. One wonders, in a case such as the present, just what a motion to reduce Mr. Douglas’s sentence might be if it is not a thing of value given or promised in exchange for his testimony?

Douglas’s testimony should have been stricken due to the government’s violation of the §201(c)(2). The statute is designed to prevent the provision of value in exchange for testimony. Promises of leniency have long been recognized as a “strong inducement” to testify falsely. *United States v. Meinster*, 619 F. 2d 1041, 1045 (4th Cir. 1980). Corrupt mind, on the part of the offeror, is not required by the statute. *Golden Door Jewelry v. Lloyds*, 865 F.Supp. 1516, 1523 (S.D. Fla. 1944).

If violation of 18 U.S.C. 201(c)(2) was not sufficient to suppress the testimony, then violation of Rule 3.4(b) of the Model Rules of Professional Conduct as adopted by the State of Kansas is. Rule 3.34(b) provides in pertinent part that “A lawyer shall not: (b) falsify evidence, counsel or assist a

witness to testify falsely, **or offer an inducement to a witness that is prohibited by law.**” Rule 3.4(b) (emphasis added). The government suggests that a motion to reduce sentence is not prohibited by law, and thus Rule 3.4 has not been violated.

It is correct that 18 U.S.C. 3553(e) provides the government with the authority to request that the court impose a sentence below the minimum guideline level in exchange for “substantial assistance.”

However, testimony in exchange for leniency is not described by the statute as the form by which substantial assistance required. There are, one is sure, many other ways to provide substantial assistance. Certainly methods of substantial assistance can be developed by the government other than testimony in exchange for leniency. The government should not break the law to enforce other laws.

18 U.S.C.(c)(2) prohibits offering, promising or giving anything of value in exchange for testimony. Because testimony in exchange for value is prohibited by law the government violated Rule 3.34(b). As a sanction appropriate to that violation the testimony of Douglas should have been suppressed.

II. The District Court Erred in Not Granting the Defense Motion for Judgment of Acquittal on the Charge of Conspiracy to Distribute Cocaine Based Upon the Insufficiency of the Evidence

Review of the district court’s denial of a motion for acquittal is de novo, and all evidence is viewed, and all inferences are drawn, favorably to the government. *United States v. Lampley*, ___ F.3d ___, 1997 WL 644459 (10th Cir. decided October 20, 1997.) A motion for judgment of acquittal based upon the sufficiency of the evidence may be properly denied if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 278, 61 L.Ed2d 560 (1997). When that test is applied to the present case the charge of conspiracy to distribute cocaine must be dismissed.

The conspiracy to distribute cocaine charge against Ms. Singleton was tried to the jury under

the theory that she conspired only with Mr. Johnson to distribute cocaine. In his testimony Douglas admitted that Ms. Singleton was not involved with him and McClelland in their conspiracy to distribute cocaine. In that context, the most damaging evidence which the government offered to prove that Ms. Singleton conspired to distribute cocaine was that she was present with Mr. Johnson when cocaine was packaged for sale.

No one saw Ms. Singleton sell cocaine. No one saw Ms. Singleton in the possession of the proceeds of drug money. At best the case against Ms. Singleton amounts to this.

- A. Douglas was called to Wichita by defendant Ronald McClelland, for the purpose of engaging in the enterprise of selling cocaine. (Tr. Vol. IV, at 208.)
- B. Douglas and McClelland lived for a short time in the apartment occupied by the Ms. Singleton and Eric Johnson. (Tr. Vol. IV, at 209.)
- C. While in Wichita, Douglas observed Johnson in possession of cocaine, he observed Johnson packaging cocaine, he observed Johnson selling cocaine, and he observed Johnson in possession of funds which he (Douglas) believed - but could not state with specificity - were derived from the sale of cocaine. (Tr. Vol IV, at 211.)
- D. Douglas never saw Ms. Singleton packaging or processing cocaine, he never observed Singleton sell or assist in the sale of cocaine, and he never observed Singleton in possession of money which was derived from the sale of cocaine. He did say that “**maybe**” he saw Singleton “handle” cocaine at the request of” Johnson. (Tr. Vol. IV, at 212.) (Emphasis added.)
- E. While continuing to deny that he and McClelland entered into an agreement or conspiracy with Johnson or Singleton for the purpose of selling or acquiring cocaine, Douglas stated that on occasion Johnson, assisted him (Douglas) and McClelland in locating a supply of cocaine, that Johnson, not Singleton, taught him (Douglas) and McClelland how to package and transport cocaine, that he (Douglas) and McClelland kept their supply of cocaine separate from Johnson’s supply of cocaine, that he (Douglas) and McClelland sold drugs to some of the same customers that Johnson sold to, and, on occasion, he (Douglas) and McClelland used one of the same couriers that Johnson had used in his cocaine operation; and that he (Douglas) and McClelland never shared profits from the sale of cocaine with either Johnson or Singleton. (Tr. Vol. IV, at 236 and 242.)

At best this testimony raises only a suspicion of guilt. Accordingly it does not satisfy the test set out in *United States v. Troutman*, 814 F.2d 1428, 1455 (10th Cir. 1987), (“(T)he evidence presented to

support the conviction must be substantial; that is it must do more than raise a mere suspicion of guilt.”
(citations omitted.)

When viewed in a light most favorable to the government, the only evidence that the government offered which tended to prove that Ms. Singleton was a member of a conspiracy to distribute cocaine was that she was present when cocaine was packaged by her boyfriend at the apartment on South Hydraulic. Mere presence is insufficient to prove the crime of conspiracy to distribute cocaine. *United States v Savaiano*, 843 F.2d 1280 (10th Cir. 1988) *certiorari* denied 109 S.Ct. 99, 488 U.S. 836, 102 L.Ed.2d 74. Utterly absent from the record is any other evidence of Ms. Singleton being involved in a conspiracy with Johnson to distribute cocaine. Douglas testified that he had no first hand knowledge of such a conspiracy, and he had never observed Ms. Singleton present when cocaine was sold. The best that can be said of the government’s case with respect to Ms. Singleton having been involved in a conspiracy to distribute cocaine was that she was associated with others who distributed cocaine. Mere association will not support conviction. *United States v. Casto*, 889 F.2d 562 (5th Cir. 1944) *cert. denied* 110 S. Ct. 1164, 493 U.S. 1092, 107 L.Ed.2d 74.

In the present case there is an absence of evidence of common understanding and unity of purpose needed to form a drug conspiracy. *United States V. Staggs*, 881 F.2d 1546, 1550 (10th Cir. 1989). The evidence offered at Ms. Singleton’s trial was not sufficient for the jury to find her guilty beyond a reasonable doubt. The ruling of the District Court must be overturned.

III. The District Court Erred in not Granting the Defense Motion for Judgment of Acquittal on the Charges of Money Laundering Based Upon the Insufficiency of the Evidence

In all of the money laundering counts with which Ms. Singleton was charged, and of which she was convicted, it is alleged that Ms Singleton and Mr. Johnson laundered money. There is no

allegation that she laundered money for or with any other person. To establish a charge of money laundering, the government must prove:

(1) the defendant took part in a financial transaction; (2) the defendant knew that the property involved in the transaction involved the proceeds of illegal activity; (3) that the property involved was in fact the proceeds of that illegal activity; and (4) the defendant knew that the transaction was designed in whole or in part to conceal or disguise the nature, source, location, ownership, or control of the illegal proceeds. 18 U.S.C. §1956(a)(1); *U.S. v. Garcia-Emanuel*, 14 F.3d 1469, 1473 (10th Cir. 1994).

United States v. Ruiz-Castro, 92 F.3d 1519, 1531 (10th Cir. 1996.) In ruling upon the sufficiency of the evidence the court, “must look at all the evidence, both direct and circumstantial, together with the reasonable inferences to be drawn therefrom in a light most favorable to the government to determine whether a reasonable jury could find the defendant guilty beyond a reasonable doubt. *United States v. Ratchford*, 942 F.2d 702, 703 (10th Cir. 1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 1185, 117 L.Ed.2d 427 (1992).” *United State. v. Levine*, 970 F.2d 681, 684 (10th Cir. 1992). The evidence presented must be substantial. *United States v. Troutman*, 814 F2d at 1455.

With respect to Ms. Singleton, that evidence consists of the following:

- A. The testimony of Mr. Keckler, an expert in known document analysis. Mr. Keckler testified that Ms. Singleton had been the person who signed several of the wire transfers, and that she had signed the name of Crystal Singleton to Exhibit 11, a wire transfer which served as the basis of Count 21. (Tr. Vol. III, at 179-189.)
- B. Crystal Singleton testified for the defense. She told the jury that it was she, and not Sonya Singleton, who has wire transferred the money referred to in Exhibit 11, and that it was she who signed her name to the exhibit. (Tr. Vol. V, at 349-347.)

This is not substantial evidence, and no matter how the government tarts it up with conclusory statements concerning what it was that Ms. Singleton may have known about money transferred for Messrs. Douglas, McClelland or Searcy, the nature of the evidence with respect to the crimes charged against her is not changed.

Among other things, it was incumbent upon the government to prove with respect to each money laundering charge, that the money which Ms. Singleton wire transferred was the proceeds of an illegal activity and that Ms. Singleton knew the money was the proceeds of an illegal activity. It is on these elements that proof is lacking. The government offered no evidence with respect to the source of the money which Ms. Singleton is alleged to have wire transferred in counts 24 through 30. In addition, the government offered no evidence with respect to what Ms. Singleton may have known about the source of any of that money. There must be some evidence that the money was drug sale proceeds and that Ms. Singleton knew it or the charge cannot stand. Inference is not evidence of substance.

There was some evidence that Kelvin Williams, a friend of Eric Johnson's used wire transferred money to buy drugs. (Tr. Vol. IV at 226 and Tr. Vol. V at 383.) However, the government offered no evidence as to whether any of the money transferred by Ms. Singleton was used by Williams to purchase drugs or as to what or who was the source of the money transferred to Williams.

The government's entire case with respect to money laundering is based upon conjecture. The evidence presented must be substantial if it is to sustain a conviction. *United States v. Troutman*, 814 F.2d at 1455. Agent McCormak, perhaps the government's best witness, admitted, albeit grudgingly, that he had no evidence to show that Johnson had given Ms. Singleton any money of the money that was wire transferred. If Johnson was involved in illegal activity, the government failed to prove that he gave any of the proceeds to Ms. Singleton to launder.

In order to convict Ms. Singleton of money laundering the government had to prove that Ms. Singleton (1) took part in a financial transaction; (2) that she knew that the property involved was the proceeds of illegal activity; (3) that the property was in fact proceeds of illegal activity; and (4) that she knew that the transaction was designed to conceal, either in whole or in part, the nature, source,

location, ownership or control of the proceeds. *United States v. Ruiz-Castro*, 92 F.3d, at 1531. There is an absence from the record of any evidence concerning from whom Ms. Singleton received the money which she is alleged to have laundered, and there is no evidence that the money was proceeds of an illegal activity. The third element required by *Ruiz-Castro* is missing from the case against Ms. Singleton.

Further, because there is no evidence of the source of the funds transferred by Ms. Singleton, there is a corresponding failure of evidence as to what Ms. Singleton may or may not have known about the source of the money. No evidence was offered to prove that Ms. Singleton knew that any money she may have transferred was proceeds of illegal activity. The second element of the *Ruiz-Castro* test was not satisfied.

On the basis of the entire record of the case, the evidence both direct and indirect, and the inferences to be drawn therefrom, taken in a light most favorable to the government there is insufficient evidence to sustain Ms. Singleton's convictions on the charges of money laundering. The convictions should be dismissed.

CONCLUSION

For the reasons set forth herein, the appellant, Sonya Singleton, requests that this court vacate and reverse her convictions of conspiracy to distribute cocaine and money laundering, and remand the case to the District Court for further proceedings, and for such other and further relief in the premises as is just under the circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the ____ day of November, 1997 true and correct copies of the above and foregoing Appellant's Reply Brief were served upon the United States, by depositing a copy of the same in the United States Post Office, postage pre-paid, and addressed to:

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and the original and seven copies were mailed to:

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